

MEMORANDUM OF LAW

DATE: December 7, 1992

TO: Cynthia E. Kodama, Property Agent, Property
Management Services

FROM: City Attorney

SUBJECT: Penasquitos Branch YMCA

In your memorandum of October 29, 1992 you asked two questions regarding the Penasquitos YMCA and their obligations to pay Facility Benefit Assessments ("FBA").

BACKGROUND

The YMCA of San Diego County is planning to construct a branch YMCA facility on property it has received from Genstar Corporation in the Rancho Penasquitos Community of the City. The YMCA budget is not sufficient to allow them to pay for the construction costs as well as the FBA which would normally be assessed on a private project. The YMCA is exploring ways to donate the property to the City and lease it back to fulfill both City's and YMCA's objectives.

QUESTION

What would be required to classify the Rancho Penasquitos Branch YMCA in a category where it would be deemed to be a public project and therefore exempt from the FBA charges?

ANSWER

If the land and improvements are irrevocably dedicated to public recreational uses for a period as long as the reasonable life of the development to be served then FBA payments would not be required.

REASONING

The Facilities Benefit Assessments are levied upon all land within the defined communities. (San Diego Municipal Code ("SDMC") section 61.2201.) Any person seeking to construct a building on the land is required to pay the assessment at the building permit stage. (SDMC section 61.2210.) The only way for the YMCA to avoid this obligation is to convert their private activity which places a burden on facilities to a public facilities project which provides a public benefit. (SDMC section 61.2202(j)(5).) Therefore, if the YMCA were to construct

a Public Facilities Project which would serve a community recreational need and meet with the goals of the community plan then they would not have to pay the FBA to be issued a permit.

The remainder of your inquiry is how long does the transfer have to be to achieve the objective, and must the agreement address both land and building? The purpose of the FBA is to mitigate the impacts of development. To mitigate the impacts the public facility should serve the community during the life of the construction which has been assessed with a Facilities Benefit Assessment or development impact fee. The anticipated normal service life of the homes being assessed is fifty years. The normal service life of a permanent public recreational facility is in excess of fifty years.

The facility necessary to provide the services involves the use of both the land and the structure, however only the structure is assessed. I know of no way to sever the structure from the land and still provide the public service. Therefore to have the structure fulfill the public projects goal, the land should be available under the same terms.

JOHN W. WITT, City Attorney

By

John K. Riess

Deputy City Attorney

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